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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States parties due in 1998

PERU

Addendum

Comments on the concluding observations and recommendations of the Human Rights Committee relating to the third periodic report of Peru on the implementation of the International Covenant on Civil and Political Rights

GE.99-46111 (E)

Background

In document CCPR/C/79/Add.72, the concluding observations and recommendations of the Human Rights Committee relating to the consideration of Peru's third periodic report, adopted at its 1555th meeting (fifty-eighth session) on 6 November 1996, were transmitted to the Peruvian State.

Principal subjects of concern

Paragraph 7. The Committee regrets that the constitutional status extended to the Covenant by Peru's 1979 Constitution has been substantially diminished, thereby reducing the protection previously enjoyed by individuals in Peru as regards the rights enshrined in the Covenant.

Comments

1. The 1979 Constitution stated that, in the event of conflict between the treaty and the national law, the treaty would prevail, and stressed that the provisions contained in the human rights treaties had constitutional status. This principle was adopted in Title I (On the individual and society) of the 1993 Constitution, which incorporates the rights established by the 1948 Universal Declaration of Human Rights, and in Title V relating to constitutional guarantees, which ensure respect for human rights.

2. The constitutional status granted to human rights treaties does not mean that their provisions may be amended by the procedure established for constitutional reform by the 1979 Constitution. On the contrary, article 32 of the current Constitution stipulates, in the chapter relating to political rights and duties, that "the suppression or reduction of the fundamental rights of the individual, taxation and budgetary provisions, and international treaties in force may not be the subject of a referendum". This provision simply reflects the intention to guarantee the full realization of fundamental rights in Peru.

3. Once the treaty ratification and entry-into-force process has been completed, the rights established by the treaty, in their entirety, enjoy constitutional recognition, which guarantees their strict observance and realization. Although the 1993 Constitution does not specifically provide for the precedence of a treaty over the law in the event of conflict, this is due to a question of legal security of our internal system. As was the case before the entry into force of the 1993 Constitution, the adoption of a treaty is conditional upon its non-violation of the Constitution; in this respect, the fundamental rights which have been proclaimed by treaties in force are consistent with those recognized by the Constitution.

4. It is thus apparent that the fundamental rights of the individual are fully guaranteed and may not be challenged. The International Covenant on Civil and Political Rights remains fully in force in the Peruvian legal system, especially since the rights embodied in the Covenant are incorporated in the 1993 Constitution, which moreover recognizes supranational jurisdiction with respect to human rights, in stipulating that "once internal jurisdiction has been exhausted, any person who considers that his constitutional rights have been infringed may have recourse to the international courts or organs established under treaties or agreements to which Peru is a party".

Paragraph 8. The Committee once again deplores the fact that Peru has ignored both the concerns expressed by the Committee in the observations adopted when it concluded its consideration of the first part of Peru's third periodic report and the suggestions and recommendations made in those same observations, arguing that Peru is entitled to give precedence to considerations of security or domestic policy over its obligations under the Covenant. The Committee considers that, in conformity with international law, article 1 of the Covenant does not authorize the State to adopt a new Constitution that may be incompatible with its other obligations under the Covenant. The Constitution is part of the legal order of the State and as such may not be invoked as grounds for exemption from compliance with an international obligation freely entered into by the State.

Comments

1. The rule of law requires a consensus between citizens and institutions. These directly provide each other with mutual sustenance through the desire to guarantee the basic principles which ensure the full realization of the separation of powers and respect for constitutional rights. At the present time, in the major Western liberal democracies, the legal system based on the theory of the rule of law has the following foundations: the submission of the acts of the State to the principle of legality and the law, and the protection of the rights of the individual and his freedom against any abuse of authority. This presupposes the existence of a hierarchy of norms, in which the Constitution is pre-eminent as a fundamental norm, in essentially establishing the rules of the political operation of the institutions of the State and reaffirming the supremacy of the law over political matters.

2. As a set of rules which refer to the exercise of political power within the State, the 1993 Constitution reflects the fundamental rights of the individual and imposes the rules of the State institutions. As a fundamental norm of the State, its role is to establish the control which guarantees respect for the legal order, in other words, the principle of the constitutionality and legality of laws.

3. In this respect, our Constitution is not incompatible with the obligations established in the Covenant, and recognizes the social, economic and cultural rights of individuals, since the realization of these rights occurs to the extent that people interact and engage in social activities. In this situation, in order to enter into relations with others, every individual must have guarantees for his right to life, to his identity, to his honour, privacy, beliefs, etc.; these rights are enshrined in our Constitution.

Paragraph 9. The Committee in particular deplores the fact that the recommendations relating to the amnesty laws (CCPR/C/79/Add.67, para. 20) have not been followed and that no effective remedy is available to allow the victims of human rights violations by State agents to claim compensation. It also regrets the lack of information on the fate of the recommendations made in paragraphs 22, 23 and 26 and the failure to respond to the recommendation made in paragraph 24.

Comments

1. In previous communications, the Peruvian State has explained the reasons which underlay the promulgation of the amnesty laws. Because of the actual effects of this legislation, the investigation and punishment of those who have benefited from those effects are not possible. The amnesty granted by the Peruvian State, according to doctrine, constitutes "the magnanimous power of the legislature to regulate any types of competence and guarantees, with no restrictions other than those determined at its discretion". It must also be viewed in the context of the campaign against the terrorism which the Government had to confront, with the aim of strengthening the process of national pacification.

2. Although, because of its effects, the investigation and punishment of the perpetrators of specific criminal acts are not possible, amnesty does not preclude or diminish the right of the injured parties, or their relatives, to recourse to the competent Peruvian courts in order to demand payment of compensation. In the present case, the way has been cleared for this right but its exercise is still pending.

3. Unconstitutionality proceedings against Acts No. 25,479 and No. 25,492 (file No. 013-96-I/TC) were brought before the Constitutional Court, and a decision of 28 April 1997, published in the official gazette El Peruano on 9 May 1997, declared the action inadmissible. The right of relatives to avail themselves of the appropriate procedures in order to claim financial redress was thus left intact.

4. This decision, handed down by the Constitutional Court in case No. 013-96-I/TC, declared inadmissible the unconstitutionality action relating to Acts No. 26,479 and No. 26,492, on the grounds that their effects were exhausted before 24 June 1996, the date on which the Court was established. The right referred to in the following point 12 of the decision was left intact:

> "With regard to the right to civil redress, article 58 of the Code of Military Justice provides that amnesty and pardon leave civil redress proceedings unaffected; consequently, persons who considered themselves to have been injured by the criminal acts covered by the amnesty were able to exercise their right to due civil redress against the perpetrators of those offences or against the State, bound in consequence of its subsidiary responsibility, because it was Congress which approved the amnesty that is the subject of this action. If there are any injured parties who have not obtained such redress, they may claim it from the competent authorities."

5. In this connection, the proceedings and remedies whereby relatives of injured parties may take judicial action, after duly accrediting their relationship, to claim any compensation to which they may be entitled are pending. Thus, remedies before the domestic courts in order to obtain financial redress are still pending and, because of the applicability of the amnesty, it is not possible to bring criminal charges against those perpetrators who have been granted the amnesty.

Paragraph 10. The Committee takes note of the measures adopted by Peru to pardon persons convicted of terrorism. Notwithstanding its satisfaction at the release of 69 persons, the Committee considers that the pardon does not provide full redress to the victims of trials

conducted without regard for due process of law and repeats the recommendation made in paragraph 21 of its observations, which includes the need to establish an effective mechanism, at the initiative of the State, to revise all the convictions handed down by the military tribunals in treason and terrorism cases.

Comments

1. Decree-Law No. 25,475, which established the penalties for terrorist offences and the procedures for their investigation, prosecution and trial, states in article 19 that "persons tried or convicted for terrorist offences are not eligible for any of the benefits established by the Penal Code or the Code of Criminal Procedure". These benefits included pardon (Penal Code, art. 85).

2. The Government of Peru has been particularly conscious of the Committee's recommendation to release a number of prisoners whose legal situation was a source of concern to the international human rights organizations, which considered that there was no justification for the sentences imposed.

3. In this respect, and basically for humanitarian reasons, Act No. 26,655 of 16 August 1996 established an ad hoc commission to evaluate, determine and propose to the President of the Republic, on an exceptional basis, the granting of pardon to persons sentenced for terrorist offences or treason on the basis of insufficient evidence to enable the commission reasonably to presume that they had not had any type of link with terrorist elements, activities or organizations.

4. This commission is composed of the People's Advocate (its chairman), the priest Hubert Lanssiers as representative of the President of the Republic, and the Minister of Justice. To date, after consideration of the reports prepared by the commission, 360 persons charged with treason or terrorist offences have been pardoned.

5. In this connection, the Peruvian State has been giving attention to the concern expressed in various international human rights forums concerning the situation of those persons who were sentenced on the basis of insufficient evidence and who, in the commission's opinion, were not involved in the perpetration of criminal offences recognized as serious. The system of pardons designed by the Peruvian State forms part of the process of national pacification, as an immediate step in the search for national harmony. Apart from this, steps such as the following have been taken: full reinstatement of the beneficiaries of pardon in their normal work, pursuant to criminal provisions which establish their legal rehabilitation without further process. In addition, note is taken of the concern expressed by international organizations about the review of the sentences handed down by the military courts in the trials relating to terrorism and treason.

Paragraph 11. The Committee regrets the fact that Peru has not only failed to take measures in response to the recommendation made in paragraph 25 of the observations, but has on the contrary extended, only a few days before the second part of the report was considered, the system of "faceless judges". The Committee expresses its profound concern at this situation, which undermines the judicial system and will again lead to the conviction of innocent persons without a proper trial.

Comments

1. The Peruvian State has on occasion explained the need to resort to emergency criminal legislation and the suspension of rights, as permitted by states of emergency, in order to combat terrorist crime. This has been done on the basis of a legal and institutional structure capable of dealing effectively with terrorism, which had spread throughout the country and was seriously threatening the country's very existence. This legislation included the procedural possibility of concealing the identity of judges, members of the Public Prosecutor's Office and court officers taking part in trials.

2. The institution of "faceless judges" and the use of military courts for offences of treason in the fight against terrorism were two essential aspects of this kind of trial. The reason this was done was that terrorist gangs would identify judges, intimidate them and frequently attempt to murder them; at the same time, the weakness of the judiciary, which was one of the reasons why the reform was necessary, made it possible for the perpetrators of these offences and their accomplices to escape the punishment they deserved.

3. The procedural possibility of concealing identity did not mean that judges, members of the Public Prosecutor's Office and court officers taking part in trials of terrorist offences were not known to the State or the supervisory bodies concerned. Only those on trial were kept unaware of their identity in order to prevent reprisals against their relatives or the authorities.

4. In view of the progress made, the Government, as part of its policy of relaxing anti-terrorist legislation, repealed Acts Nos. 26,447 and 26,537, which had provided for the continued existence of "faceless judges". Later, by means of Act No. 26,671 of 12 October 1996, the Government ensured that, with effect from 15 October 1997, the trial of terrorist offences under Decree-Law No. 25,475 and the appeals procedure in the relevant judicial bodies were carried out by the appropriate judges, in accordance with the procedural and organizational regulations in force, and with judges duly appointed and identified according to the rota system.

5. Similarly, by Administrative Decision No. 510-CME-PJ of 30 October 1997, the permanent criminal division of the Supreme Court was made the executive body in the conduct, supervision and monitoring of trials in criminal proceedings for terrorist offences. Thus, with effect from 15 October 1997, Peru's system of concealing judges' identity, known as "faceless justice", came to an end.

Paragraph 12. The Committee appreciates the information provided by the State on communications Nos. 201/1986, 203/1986, 263/1987 and 309/1988, which are still pending, but regrets that the State's efforts have not led to proper redress for the victims. At the same time, the Committee deplores the lack of information on the observance of Act No. 23,506, ordering immediate compliance with the Committee's observations through the procedure employed to enforce judgements handed down by national courts against the State.

Comments

1. The information requested on communications Nos. 202/1986, 203/1986, 263/1987 and 309/1988, and on the measures which the Peruvian State has adopted in order to put the Committee's recommendations into effect is provided in the comments on paragraph 21 in the present report.

2. The purpose of the Habeas Corpus and remedy of Amparo Act (No. 23,506) is to restore the situation to that which existed prior to the infringement or threat of infringement of a constitutional right. These remedies may be exercised in cases where constitutional rights are infringed or threatened by the Commission or omission of mandatory acts.

3. As to the procedure used to enforce decisions of the national courts against the State, it must be pointed out that article 11 of the above-mentioned Act provides that if, on the conclusion of habeas corpus and amparo proceedings, the person responsible for an assault has been identified, the initiation of the corresponding examination will be ordered. In the case of a public official or authority, in addition to the stipulated penalty, the person concerned shall be dismissed from the service and barred from exercising public office until two years after completion of the principal sentence. The person concerned shall also be ordered to pay the trial costs and compensation for the injury caused.

4. Obedience to orders given by a superior does not absolve the perpetrator of the acts from responsibility or from the stipulated penalty. If the person immediately responsible for the violation was the President of the Republic, a Congressional representative, a Minister of State, a member of the Constitutional Court, a member of the National Council of justice, a member of the Supreme Court, a senior prosecutor, the People's Advocate or the Comptroller-General of the Republic, it shall immediately be reported to Congress for such purposes as may be appropriate.

5. In addition, Act No. 25,398, supplementing the provisions of the Habeas Corpus and Remedy of Amparo Act (No. 23,506), stipulates, in article 27, that accepted or enforceable final decisions in guarantee proceedings shall be executed by the judge, division or court which heard them at first instance, in accordance with the manner and form established by the Code of Civil Procedure, to the extent they are compatible with their nature.

6. Article 39 of Act No. 23,506 stipulates that, if a person considers that his constitutionally recognized rights have been infringed, the international jurisdictional bodies to which he may have recourse are the United Nations Human Rights Committee, the Inter-American Commission on Human Rights (Organization of American States), and any other bodies that may be established in the future and be approved by treaties binding on Peru.

7. In this connection, in order to be valid and have effect, the decision of the international body to whose binding jurisdiction the Peruvian State is subject does not require any prior examination or review. The Supreme Court of Justice of the Republic will receive the decisions adopted by the international body, and will order them to be executed and complied with in conformity with the internal procedures and provisions in force on the execution of sentences (Act No. 23,506, art. 40).

Paragraph 13. The Committee regrets the lack of full and precise information on the legal status of women and on their enjoyment of the rights enshrined in the Covenant, particularly as regards their legal capacity, the frequency of violence and sexual abuse against female detainees or prisoners, legal and practical restrictions in the labour sphere, and the impact of recent laws and programmes designed to solve the problem of violence against women.

Comments

1. Peru is a party to the International Covenant on Civil and Political Rights, having ratified it by Decree-Law No. 22,128 of 28 March 1978 and thereby undertaking to guarantee to both men and women equality in the enjoyment of all the civil and political rights enunciated in the Covenant. In this connection, the 1993 Constitution recognizes the right of every person to equality before the law, stating that no one may be discriminated against on account of origin, race, sex, language, religion, opinion, property or any other consideration.

2. In the context of the commitments undertaken vis-à-vis various international forums, the Peruvian State has adopted concrete and effective measures to guarantee the enjoyment of the rights enshrined in the Covenant. Peru is one of the countries in which substantial legislative changes have taken place with the aim of preventing, dealing with and eradicating violence against women. At present, the legal vestiges entailing discrimination against women which still existed even after the entry into force of the 1979 Constitution have by and large been eliminated.

3. As to the impact of recent laws and programmes designed to solve the problem of violence against women, we may say that in Peru one of the most important steps taken in the legal sphere was the promulgation of Act No. 26,260 (December 1993), which established State policy on family violence. Subsequently, this Act was amended (by Act No. 26,763) and condensed into a single consolidated text, constituting the Protection against Family Violence Act, which was intended to make its enforcement more effective.

4. The latest Act contains a new definition of family violence, establishing that it comprises "any act or omission that may cause physical or psychological harm, ill-treatment without injury, including severe coercion or threats, which occurs between spouses, persons living together, relatives in the ascending or descending line, collateral relatives or persons living in the same home, provided that no contractual or employment relationships are involved". It establishes as State policy free care in medical establishments when requested by the police, the Public Prosecutor's Office or the courts, and the full probative value of certificates issued by the State health establishments in family violence cases. These certificates must be issued free of charge. Thus care for victims of violence has been extended, having previously been restricted to the few forensic medical facilities which existed.

5. The Municipal Offices for the Defence of Children and Adolescents are authorized to intervene in cases of family violence and convene conciliation hearings. The new Act provides that all police stations (which have now reverted to their old name comisarias) are obliged to receive complaints of family violence and to conclude investigations with an attestation which may be sent to the Justice of the Peace or the Provincial Criminal Procurator, as appropriate, and to the Family Procurator. The latter convenes a conciliation meeting, but cannot compel women

to attend if they are afraid or unwilling to participate. In such cases, the peace of mind and protection of the victim are paramount. If conciliation does take place, it will have the force of a judgement since, if it is not complied with, court intervention may be sought in order to secure compliance. The Family Judges intervene on the application of the Family Procurator or on the direct application of the victim, and are empowered to order immediate protection measures.

6. Criminal legislation has been adapted in line with the changes in the provisions relating to family violence. Thus, Act No. 26,788 of 16 May 1998 amended the Penal Code in respect of the penalties applicable to the offence of causing serious or slight injury and minor offences against individuals. The existence of a family relationship between the victim and the aggressor is regarded as an aggravating circumstance.

7. In the international sphere, it should be noted that Peru's primary concern has always been the effort to ensure recognition of the rights of all women. Consequently, in the light of the initiatives adopted by various international organizations, we may note that Peru has signed and ratified the two most important international instruments relating to the question of violence against women, namely, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, signed on 23 July 1981 and ratified on 13 September 1982, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará), signed on 12 July 1995 and ratified on 4 June 1996. The latter Convention recognizes violence against women as a violation of human rights and fundamental freedoms.

8. Recognizing the issue of family violence as a public health problem, in July 1997 the Peruvian Government incorporated in the General Health Act the right of every person to the recovery, rehabilitation and promotion of his mental health. Alcoholism, drug dependence, psychiatric disorders and family violence are regarded as mental health problems, care for which is the primary responsibility for the family and the State.

9. October 1997 saw the commencement of the family violence training programme for police officers. The courses will consist of 240 hours of tuition, initially for 300 police officers in Lima and Callao. In 1998 they will continue at the national level, with the aim of enabling the police to make specialized efforts to improve the quality of the service they provide.

10. In addition, measures have been taken to prevent and deal with family violence, including violence against women, through the establishment of social networks in the context of the development of policies to curb this problem. The formation of cooperation and mutual assistance groups, composed of women belonging to grass-roots social organizations, is one of the phases envisaged within this programme. To this end, the authorities plan to develop the social mobilization officer training project; the work of these persons will have a multiplier effect and will effectively increase the project's quality and scope.

11. In addition, since March 1997, the Ministry for the Advancement of Women and Human Development has had a hotline service to deal with cases of family violence; this has provided emotional support, and an information, guidance and referral service to specialized bodies included in the range of institutions available for this service.

Paragraph 14. The Committee expresses its concern about the existence of a number of provisions of the Civil Code that discriminate against women, such as the difference in the minimum age required for matrimony and the fact that single mothers aged under 16 lack legal capacity to recognize their children. This gives rise to problems of compatibility between Peruvian legislation and articles 3, 23, 24 and 26 of the Covenant.

Comments

1. Article 241 (1) of the 1984 Civil Code prohibits the marriage of persons who have not reached the age of puberty. However, a judge may overrule this impediment when serious grounds exist, provided that the man has reached the age of 16 years and the woman 14. This exception exists since, in certain cases, it is possible that the man or the woman may meet the requirements of physical, mental and economic competence before reaching the legal age of puberty, or serious circumstances may make necessary the marriage of persons who have not yet reached that age. The Code permits the flexible application of the general rule in a number of cases.

2. First, the judge may waive this requirement when serious grounds exist and the man has reached the age of 16 and the woman 14. As compared with article 87 of the 1936 Civil Code, the age has been reduced from 18 for the man and 16 for the woman. Secondly, a marriage entered into by a person who has not reached the age of puberty is considered to be automatically valid if its annulment has not been requested by the day following that on which that person comes of legal age.

3. If such a marriage is annulled at the behest of a third party, the spouses may confirm it retroactively when they come of age (art. 277 (1)). Lastly, the fact of not being of age may not be adduced as a reason for the invalidity of the marriage if the woman has conceived (art. 277 (1)).

4. In connection with the Committee's observation that single mothers under 16 years of age do not have legal capacity to recognize their children, we would point out that recognition is the legal act by which a person manifests his extramatrimonial paternity or maternity vis-a-vis another person. This manifestation of will giving rise to the legal act must emanate from a person having full capacity for enjoyment and for exercise.

5. In this connection, article 43 (1) of the Civil Code provides that juveniles under 16 years of age in no circumstances have legal capacity; the age at which they acquire full capacity for the exercise of civil rights is deemed to be 18 (art. 42). In addition, article 393 of the Code states: "Any person who is not subject to the disabilities listed in article 389 and is at least 16 years of age may recognize a child born out of wedlock".

6. As is apparent from the latter article, our legislation does not permit a mother under 16 years of age to recognize a child born out of wedlock since she would be totally incompetent to perform legal acts. In such a situation, the said child, as stipulated in article 389 of the Civil Code, may be recognized by the respective grandfather or grandmother in the event of the death of the father or the mother, or when the latter are covered by article 43 (2) and (3), which stipulate that "The following are totally incompetent: ... (2) Persons who, for any reason,

are deprived of discernment; and (3) Deaf mutes, blind and deaf persons, and blind and mute persons who are unable to express their will unambiguously"; article 44 (2) and (3), which stipulate that "The following are relatively incompetent: ... (2) Mentally retarded persons; and (3) Persons suffering from mental disability which prevents them from freely expressing their will"; and article 47, which determines the situation of a person who is not present in his domicile and whose whereabouts are unknown.

7. From the above-mentioned articles we may conclude that our legislation does not permit recognition of a child born out of wedlock by a juvenile under the age of 16 (Civil Code, art. 393). This article stipulates that recognition of such a child may be effected by the grandfather or grandmother in three cases: (a) death of the father or mother; (b) incompetence; and (c) disappearance (art. 389). From this it may be concluded that the mother or the father must have reached this minimum age in order to be able to recognize a child born out of wedlock.

8. However, in response to the concern of the international organizations, the possibility is being studied of introducing into our legislation a provision whereby a mother under the age of 14 may register her child's birth and recognize the child, thus acquiring relative civil competence which would enable her, if her case required, to take steps to claim maintenance for the child and for herself as the mother.

9. This question is regarded as one of the priorities of the legislative agenda prepared by the Congressional Commission on Women for the next session. The proposal aims at introducing a means of protecting teenage mothers. This need is a pressing one, which is why a provision is being framed to specify the appropriate machinery to enable juvenile mothers to be recognized as such and to obtain recognition for their children, and thereby receive the benefits to which they are entitled.

Paragraph 15. The Committee notes with concern that the law still contains a provision exempting a rapist from punishment if he marries his victim and another which classifies rape as an offence prosecutable privately. The Committee is also concerned that abortion gives rise to a criminal penalty even if a woman is pregnant as a result of rape and that clandestine abortions are the main cause of maternal mortality. These provisions not only mean that women are subject to inhumane treatment but are possibly incompatible with articles 3, 6 and 7 of the Covenant.

Comments

1. On the question of the criminal offence of rape, article 178 (third para.) of the Penal Code of 1991 stipulated: "The perpetrator shall be exempt from punishment if he marries the victim and the latter gives her free consent, after having been returned to the authority of her parents or guardian or to a safe place. The exemption from punishment referred to shall extend to the co-perpetrators".

2. This provision has been amended by article 2 of Act No. 26,770, published on 15 April 1997, which states: "In the case of offences covered by this Chapter, the perpetrator shall also be ordered to provide support for any resulting offspring, in accordance with the

provisions of the Civil Code. Proceedings are held in camera in the cases covered by articles 170 (first para.), 171, 174 and 175. In the case covered by article 175, the perpetrator shall be exempt from punishment if he marries the victim, provided that she gives her free consent, in accordance with the law".

3. The arguments used in support of the amendment of article 178 of the Penal Code, to abolish exemption from punishment for a rapist who marries his victim, were the following: the marriage would be held up as a free, voluntary and mutually agreed act, in which the search for the happiness of the spouses would prevail; it would not be regarded as redress for injury caused, since what is violated through rape is precisely sexual freedom. Hence, marriage between the rapist and his victim distorts the marital duties to which the spouses commit themselves and whose free exercise has been violated from the time the offence was perpetrated. Pressure by the perpetrator on the victim would be avoided, and she would not be obliged to reach a decision concerning a marriage which she did not want and would cause her moral and psychological trauma.

4. The costs arising from such unions would thus be considerably reduced, given that an unhappy marriage creates problems in children's upbringing and well-being, and leads to desertion and family breakdown. Other costs that would be reduced would be those arising from repetition of the offence by the perpetrator since there was an obvious inconsistency between the penalties established for these acts and the civil procedure whereby a rapist was absolved of liability. Marriage between rapist and victim does not dampen the assailant's criminal impulses, and he continues to have an urge to cause harm. In addition, there would be less uncertainty concerning the punishable nature of the offence and the victim's intention of marrying the rapist, given that the relevant judicial proceedings are held in camera.

5. In addition, article 78 of the Penal Code, which formerly stipulated that "In cases giving rise only to private proceedings, criminal action shall be extinguished by abandonment or settlement, and in offences against sexual freedom and honour, by subsequent marriage", has been amended by article 1 of Act No. 26,770, published on 15 April 1997, which states that "In cases giving rise only to private proceedings ..., criminal action shall be extinguished ... by abandonment or settlement".

6. Privately actionable offences are those described in articles 130 (abuse), 131 (slander), 132 (defamation), 170, paragraph 1 (rape), 171 (rape with aggravating circumstances), 174 (rape with misuse of authority) and 175 (statutory rape through deceit). From the moment the authorities are informed that a punishable offence has been committed, the State is obliged to investigate it. Sometimes, however, in the case of offences that violate a right more appropriately defended by the victim than by society, or where exposure could damage the honour of the victim or the victim's family, the State leaves it to the victim or the victim's legal representatives to decide whether or not to report the offence.

7. Under Peruvian criminal law abortion is a criminal offence, with exceptions that are stipulated in specific clauses providing for decriminalization or establishing mitigating circumstances. One such exception is therapeutic abortion, which is the only non-punishable case (Penal Code, art. 119). In addition, there may be ethical reasons, for example when

pregnancy is the result of rape (Penal Code, art. 120, para. 1), or eugenic reasons, if the child is likely to be born with serious physical or mental defects (Penal Code, art. 120, para. 2).

8. These two cases carry a maximum penalty of three months' imprisonment, which in practice amounts to impunity, since the police investigation and magistrates' examination stages are unlikely to be completed within that period, and the right to bring criminal proceedings is limited to four and a half months (Penal Code, art. 83, final para., in conjunction with art. 80, para. 1). Third parties who incur liability in such cases do not, however, go unpunished.

Paragraph 16. The Committee notes with concern that when cases that might lead to a divorce are heard (physical or mental ill-treatment, serious abuse and dishonourable conduct), the law instructs judges to take into consideration the education, habits and conduct of both spouses, a requirement that might easily lead to discrimination against women from the lower socio-economic strata.

Comments

1. Article 337 of the Civil Code, which formerly stipulated that "ill-treatment, serious abuse and dishonourable conduct shall be assessed by the court taking into account the education, habits and conduct of both spouses", has been amended by the Constitutional Court, in a decision dated 13 May 1997. The decision removed the requirement for the court to assess the causes of ill-treatment and dishonourable conduct taking into account the education, habits and conduct of both spouses. A court assessment of that kind is now made only where serious abuse is involved. The new text reads as follows: Article 337. "Serious abuse shall be assessed by the court taking into account the education, habits and conduct of both spouses."

2. The reason for the amendment of article 337 of the Civil Code was that it violated the fundamental right to equality before the law, a right recognized in the 1993 Constitution (art. 2, para. 2), the International Covenant on Civil and Political Rights (art. 26), and the American Convention on Human Rights (art. 24). The article was discriminatory because it put persons with little education or limited financial means at a disadvantage compared with the better-off or better-educated. While the desire to preserve the marital bond is a legitimate one, the restrictive treatment of divorce to be found in the current Civil Code shows that there are other ways of achieving the same aim, without sacrificing the constitutional principle of equality; the right to life, to physical, mental and moral integrity, and to honour and a good name is more important than preservation of the marital bond.

3. Article 337 of the 1984 Civil Code violated the fundamental right to life and to moral, mental and physical integrity insofar as all forms of violence against women are violations of human rights, especially the right to life and to physical, mental and moral integrity, as recognized in the Constitution (art. 2, para. 1). The right to life is also recognized in the International Covenant on Civil and Political Rights (art. 6) and in the American Convention on Human Rights (art. 4). The provision in question stipulated that physical and psychological violence must be considered in relation to the education, habits and conduct of the spouses, which would mean that the protection of human rights would depend on the educational and social level of the individual, and that was unacceptable.

4. Article 337 of the 1984 Civil Code violated the fundamental right to honour and a good name, since serious abuse was defined as any inexcusable and unjustified attack on the honour or dignity of a spouse, carried out intentionally and repeatedly by the offending spouse, and making family life intolerable. There was no real reason why the assessment of serious injury should depend on the couple's social status. The same insults can be equally offensive to someone with little education as to a well-to-do professional. The constitutional right to honour and a good name must be protected irrespective of a person's educational or social level. The 1993 Constitution recognizes the fundamental right to honour and a good name in article 2, paragraph 7. This right is also recognized in the American Convention on Human Rights (art. 17).

5. Article 337 of the 1984 Civil Code violated a person's fundamental right to peace and quiet and to enjoy an appropriate and harmonious environment for living his life. One consequence of the application of this article was that those persons whose applications for physical separation or divorce were turned down on the grounds of their education and habits continued to have to put up with violence and injurious and dishonourable acts that violated the right recognized in article 2 (22) of the Constitution.

Paragraph 17. In the same connection, the Committee is concerned that in Peru socio-economic criteria are used to group convicted and unconvicted prisoners, and deplores the lack of information on the exact significance of this policy, as well as the lack, in general, of detailed information on conditions of detention, to enable it to assess their compatibility with article 10 of the Covenant.

Comments

1. Article 11 of the Code of Penal Enforcement states: "Prisoners shall be segregated according to the following basic criteria: (1) men from women, (2) unconvicted from convicted prisoners; (3) first offenders from others, (4) minors under the age of 21 from adults, (5) others as determined by the regulations". Article 95 of the Code divides prisons into facilities for those awaiting trial, for convicted prisoners and for women, and special facilities.

2. Prisoners awaiting trial are not separated from convicted prisoners on the basis of any kind of socio-economic criteria. Prisoners have the right to an environment appropriate for institutional treatment on the basis of article 139 (21) of the 1993 Constitution, which gives as one of the principles and rights of the judicial function the right of unconvicted and convicted prisoners to be held in adequate facilities.

3. Facilities for unconvicted prisoners are thus intended for the detention and custody of persons under investigation or currently on trial. They comprise observation and classification centres. Correctional facilities for convicted prisoners are intended for those under custodial sentences and may be "closed", "semi-open" or "open".

4. "Closed" facilities may be either ordinary or special. In ordinary "closed" facilities, communal activities and relations with the outside are strictly controlled and limited. Special facilities are used to hold sentenced prisoners considered difficult to rehabilitate and, exceptionally and in separate premises, detainees awaiting trial who are also considered difficult

to rehabilitate; in the latter case, the competent authorities are informed. "Semi-open" facilities are characterized by greater freedom for communal activities, family visits, and social and leisure activities. "Open" facilities are those with no guards, in which the prisoner lives in conditions similar to those outside prison, without prejudice to assessment of his conduct.

5. Nationally, the prison population stood at 24,871 in November 1997, a figure that represented a 6.7 per cent increase over the same month in 1996, when there was a total of 23,307 prisoners. Of the 1997 total, 22,870 (91.95 per cent) were men and 2,001 (8.05 per cent) were women, giving a male dominance factor of 1,142.9, or 1 woman for every 11 men in Peruvian prisons. Of the same total, 16,906 (67.98 per cent) were awaiting trial and 7,965 (32.02 per cent) had been convicted. The National Institute for Statistics and Information Technology estimated the total population of the country at 30 June 1997 to be 24,371,048, which means that the 24,871 persons making up the total prison population in November 1997 represented about 0.10 per cent of the population of the country.

Paragraph 18. The Committee remains deeply concerned about the power of the police to decide to hold a person incommunicado for up to two weeks.

Comments

1. Article 2 (24) (f) of the Constitution stipulates that every person has the right to liberty and security of person; consequently, no one may be arrested except on the basis of a written and reasoned warrant from a judge, or by the police if caught in flagrante delicto. The person arrested must be brought before the appropriate court within 24 hours or the relevant time limit. These time limits do not apply to cases of terrorism, espionage or illicit trafficking in drugs. In such cases, the police may place a suspect under pre-trial arrest for a period not exceeding 15 days. They must inform the Public Prosecutor's Office and the judge, who may assume jurisdiction before that period has elapsed.

2. The Constitution provides that a suspect may be held in police custody for no longer than 15 days, but this does not mean that detainees are deprived of a proper defence. The Public Prosecutor's Office plays an active role in that its representative, the prosecutor, not only visits detention centres and ensures that a defence counsel is appointed for detainees, but also ensures that the police investigation does not exceed the limits set by law. The Public Prosecutor's Office and the judge are informed whenever anyone is taken into custody, and it is from that moment on that the prosecutors do their job of supervision and monitoring.

3. Article 2 (24) (g) of the Constitution reads: "No one may be held incommunicado except when so required for the purposes of the investigation of an offence and in the form and for the period established by the law. The authorities are criminally liable if they do not report forthwith and in writing the whereabouts of the arrested person." The police have been given this power because of the enormous difficulties they have encountered when dealing with problems such as drug-trafficking and terrorism, where suspected criminals unscrupulously exploited the principle of equality before the law.

Suggestions and recommendations

Paragraph 19. The Committee recommends that the necessary legal measures should be taken to ensure compliance with the obligations to respect and guarantee the rights recognized in the Covenant, in conformity with its article 2, paragraph 1.

1. In accordance with article 2 of the Covenant, each State party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. The Government of Peru is taking legal measures to ensure the fulfilment of its obligations to respect and ensure the rights recognized in the Covenant. Peru's legal instruments in this regard are as follows:

Constitution of 1993

Article 2 (2). "Every person has the right ... to equality before the law. No one shall suffer discrimination on account of origin, race, sex, language, religion, opinion or property, or for any other reason."

Article 26. "In labour relations the following principles are observed: 1. Equality of opportunity without discrimination."

Code of Penal Enforcement

Article V. Rights retained by the prisoner: "The prison regime shall respect the rights of the prisoner that are not affected by the sentence. Any discrimination on racial, social, political, religious, economic, cultural or any other grounds is prohibited."

Code of Civil Procedure

Article VI. Principle of social equality in proceedings: "The judge shall ensure that any inequality between persons for reasons of sex, race, religion, language or social, political or financial status does not affect the course or outcome of the trial."

Code on Children and Adolescents

Article IV. General scope of application: "This Code applies to all children and adolescents living on Peruvian territory, without any distinction on grounds of race, colour, sex, language, religion, political opinion, nationality, social origin, property, ethnic group, physical or mental disability, or any other condition pertaining to themselves or their parents or guardians."

Act No. 26,772

"Offers of employment and access to education facilities may not contain requirements that constitute discrimination or the cancellation or impairment of equality of opportunity or treatment."

Employment Promotion Act (D.S 05-95-TR/D.Leg.No. 728)

Article 1. "The national employment policy is a set of regulatory instruments designed, in accordance with articles 42, 48 and 130 of the Constitution, to promote a system of equal employment opportunities that will provide all persons with access to a useful occupation which protects them from all forms of unemployment and underemployment."

Article 62. "Dismissal for the following reasons shall be null and void: ... (d) discrimination on grounds of sex, race, religion, opinion or language."

Article 63. "Hostile acts comparable to dismissal are ... (f) acts of discrimination on grounds of sex, race, religion, opinion or language."

Civil Service Regulations (D.S. No. 005-90-PCM)

Article 99. "The civil servant has the right to advancement in the civil service on the basis of his or her occupational qualifications, and shall not be the subject of any form of discrimination."

Advertising regulations for the protection of the consumer (D.Leg.No. 691)

Article 3. "Advertisements shall respect the Constitution and the laws. No advertisement may encourage or stimulate any type of racial, sexual, political or religious discrimination or offence. Advertisements shall not contain anything that may be conducive to anti-social, criminal or illegal activities or that would appear to support, extol or encourage such activities."

Paragraph 20. The Committee reiterates the need for Peru to consider adopting effective measures in the fields referred to by the recommendations contained in paragraphs 21, 22, 23, 24, 25 and 26 of the observations made on completion of the consideration of the first part of the State party's third periodic report.

Comments

1. With regard to paragraph 21 of the preliminary observations, the comments on paragraph 10 of the present concluding observations provide the response requested. With regard to paragraph 22, it should be noted that, as part of its anti-terrorist strategy and defence of the democratic institutions, the Peruvian State is duly punishing excesses committed by certain members of the security forces who are suspected of human rights violations. The high rank of the convicted members of the armed forces and the severity of their punishments demonstrate the Government's determination not to allow these acts to go unpunished.

2. In this way, the Peruvian State demonstrates its determination to collaborate and cooperate with all United Nations and Organization of American States institutions and organizations for the promotion and protection of human rights, particularly as regards the speedy processing of allegations received. According to statistics for 1997 provided by the Public Prosecutor's Office, the number of complaints of alleged human rights violations has fallen considerably and, in the few cases that did occur, those responsible have been punished in accordance with the normal procedures.

3. As regards arbitrary detention, article 2 (24) (f) and (g) of the Constitution stipulate that:

"Every person has the right to liberty and security of person. Consequently:

(f) No one may be arrested except on the basis of a written and reasoned warrant from a judge, or by the police if caught in flagrante delicto. The person arrested shall be brought before the appropriate court within 24 hours or the relevant time limit. These time limits do not apply to cases of terrorism, espionage or illicit trafficking in drugs. In such cases, the police may place a suspect under pre-trial arrest for a period not exceeding 15 days. They shall inform the Public Prosecutor's Office and the judge, who may assume jurisdiction before that time has elapsed.

(g) No one may be held incommunicado except when so required for the purposes of the investigation of an offence and in the form and for the period established by the law. The authorities are criminally liable if they do not report forthwith and in writing the whereabouts of the arrested person."

4. The following legislative provisions are in force, guaranteeing the rights of detained persons. Directive No. 023-MD/SGMD of 28 October 1991, approved by Supreme Decree No. 064-91-DE/SG of 8 November 1991, sets forth the procedures to be followed in order to facilitate the conduct of operations in areas under a state of emergency, and specifies that human rights are to be safeguarded in coordination with the authorities of the Public Prosecutor's Office and the judiciary. In addition, Legislative Decree No. 665 of 2 September 1991 authorizes procurators to enter military facilities, police stations, prefectures and any detention centre in order to check the situation of detainees. The Ministries of Defence and the Interior must grant them the facilities and safeguards required to carry out their work.

5. Since 1992, Peru's criminal legislation has included the offence of enforced disappearance of persons (D.L. No. 25,592), with penalties for "officials or public servants who deprive persons of their liberty by ordering or carrying out actions that result in their duly confirmed disappearance". This demonstrates the State's determination to severely punish employees of the State who commit violations of human rights. The requirement to involve the Public Prosecutor's Office in investigating these acts and the establishment, with international cooperation, of a National Register of Detainees, demonstrate the efforts the Government is making to eradicate such practices, which constitute a serious obstacle to the campaign for national pacification.

6. Torture is a calculated attack on human dignity and, from the social standpoint, is intolerable. If the practice of torture was permitted or justified in any way, it would inevitably become more widespread and affect ever broader sectors of society, thereby establishing a vicious circle. Since the emergence of terrorism in Peru, international organizations have reported acts of torture and executions, attributed both to members of the terrorist organizations and to members of the State security forces acting in the areas under a state of emergency.

7. Torture is prohibited under Peruvian law as stipulated in the 1993 Constitution:

"Article 2. Every person has the right:

(1) To life, an identity, moral, mental and physical integrity, and free development and well-being. The unborn child is regarded as a subject of law in all matters favourable to it.

(2) To personal freedom and security. Consequently:

(24) (h) No one shall be subjected to moral, mental or physical violence or to torture or cruel or humiliating treatment. Anyone may request an immediate examination of a person who has been injured or is unable himself to have recourse to authority. Statements obtained through violence are not valid. Anyone who employs violence shall be held liable."

8. This constitutional framework, prohibiting torture in Peru has been developed in the Penal Code:

Article 128: "Anyone endangering the life or health of a person under his authority, orders, guardianship, curatorship or legal supervision by depriving him of the necessary food or care, or by compelling him to perform hard or inappropriate labour, or by having abusive recourse to corrective or disciplinary measures, shall be liable to between one and four years' imprisonment."

Article 151: "Anyone who, by means of threats or violence, obliges another person to do something that the law does not require or prevents him from doing something the law does not prohibit shall be liable to up to two years' imprisonment."

Article 152: "Anyone who unlawfully deprives another person of their personal liberty shall be liable to 10 to 15 years' imprisonment", inter alia.

9. In addition, according to article 195 of the Code of Criminal Procedure: "To have probative value, any item of evidence must have been obtained by means of a legitimate procedure forming part of due process." According to the Code of Penal Enforcement, Preliminary Title, article 3: "Penal decisions and custodial sentences shall be enforced without recourse to torture or inhuman or humiliating treatment or to any other act or procedure representing an infringement of the prisoner's dignity". According to article 4 of the Code on

Children and Adolescents (Decree-Law No. 26,102): "Every child and adolescent has the right to respect for his personal integrity. He or she may not be subjected to torture, or to cruel or degrading treatment."

10. Lastly, it should be noted that a number of bills on the prevention and punishment of the offence of torture are currently being considered by Congress, with a view to the incorporation of torture in the Penal Code as an ordinary offence.

Paragraph 21. Regarding communications Nos. 202/1986, 203/1986, 263/1987 and 309/1988, the Committee again draws Peru's attention to the fact that, by acceding to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant that, in accordance with the provisions of article 2 of the Covenant, the State party undertakes to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and applicable remedy if a violation is found to have occurred; accordingly, the Committee requests the State to submit to it within 90 days information on the measures adopted to implement the Committee's decisions.

Comments

1. The Peruvian State is a party to the Optional Protocol to the International Covenant on Civil and Political Rights, and has therefore recognized the competence of the Committee to determine whether there has been a violation of the Covenant. It has also undertaken to ensure to all individuals subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and applicable remedy if a violation is found to have occurred. Accordingly, in the four cases mentioned, action has been taken through the competent bodies, as described below.

2. In the case of Graciela Ato del Avellanal (communication No. 202/1986), the Committee considered that the Peruvian State should take measures to remedy the violations suffered by the complainant. The civil case that gave rise to the complaint was declared res judicata in an enforceable decision of 15 February 1984 (case No. 69-81), which declared the claim inadmissible. The amparo action was declared inadmissible under an enforceable decision of 10 April 1982 (case No. 1465-84). In view of the Committee's concern, the Peruvian State is studying mechanisms which could be applied in the case of Graciela Ato del Avellanal, and which will be notified in due course.

3. In the case of Rubén Toribio Muñoz Hermoza (communication No. 203/1986), in accordance with the Committee's recommendations and in pursuance of the decision of the former Constitutional Guarantees Court, the complainant was reinstated in his post by Directorial Decision No. 3424-89-DGPNP/PG dated 4 December 1989, with recognition of seniority, back pay and other benefits accruing since 22 September 1978, the date of his suspension by Directorial Decision No. 2437-78-GC/DP, as ordered by official memorandum No. 024-DIRPER-PNP-PG-2S dated 7 March 1990.

4. In the case of Miguel Gonzáles del Río (communication No. 263/1987), the concern regarding restrictions on the freedom of movement on the grounds that judicial proceedings

are pending is no longer justified, in the light of a report from the Immigration Department to the effect that the complainant left the country freely between 1 January 1988 and 20 September 1996 to travel to France (27 May 1991) and the United States (9 September 1991), and returned to Peru from Germany (2 June 1991) and the United States (14 September 1991). Moreover, he is not mentioned in the report of the Warrants Department of the National Police as being the subject of a summons or arrest warrant issued by any judicial authority. His application for procedural guarantees in relation to his employment situation was declared inadmissible by the Supreme Court (case No. 3087-88), with the exception that the decision, of the Comptroller-General converting the author's resignation into a dismissal was declared null and void. However, the complainant, through his legal representative, filed an action for cassation, taking the case up to the Constitutional Guarantees Court. At the time of writing, and as the new Constitutional Court takes office, it has been registered as case No. 069-92-AA/TC, and a decision dated 15 January 1998 was handed down giving the parties 10 days in which to request a new date for a hearing, in accordance with Act No. 26,853.

5. In the case of Carlos Orihuela Valenzuela (communication No. 309/1988), on 22 March 1991 the Committee declared the complaint admissible in respect of the arbitrary denial of severance pay. In administrative proceedings, the complainant was unable to establish his right to permanent employment and severance pay, and he therefore instituted an administrative challenge against the Chamber of Deputies. The Supreme Court, in its enforceable decision of 3 March 1993 (case No. 1733-92), declared valid the decision of 29 December 1988 that had overturned the lower court decision ordering the procedure to be regularized. The complainant has not proceeded further with the case, which thus remains pending.

Paragraph 22. The Committee recommends that the provisions of the Civil and Penal Codes should be revised in the light of the obligations laid down in the Covenant, and in particular in its articles 3 and 26. Peru must ensure that laws relating to rape, sexual abuse and violence against women provide women with effective protection, and must take the necessary measures to ensure that women do not risk their life because of the existence of restrictive legal provisions on abortion.

Comments

1. Family violence and sexual violence are the most serious forms of violence against Peruvian women. In 1993, Act No. 26,260 - the Action to Combat Family Violence Act - was passed; it was amended and revised in June 1997 to form a single consolidated text, Act No. 26,260 - the Protection against Family Violence Act - which embodies the policy of the State and society on all forms of family violence and establishes measures for the protection of victims.

2. Criminal legislation has developed so as to take account of the need for new standards in relation to family violence. Act No. 26,778 of 16 May 1997, for example, altered the penalties laid down under the Penal Code for the offences of causing serious or minor injury, and infringing the rights of the person, making the fact of kinship between the victim and aggressor an aggravating circumstance.

3. The Government of Peru has set up a number of institutional mechanisms aimed at the effective protection of women's rights. The Congressional Commission on Women, Human Development and Sports, which began work in 1996, proposes and disseminates legislation for protecting and recognizing the rights of women, identifies and proposes the repeal of existing legislation that may be prejudicial to women, and reports cases of discrimination and violence against women. The Office of the Ombudsman Specializing in Women's Rights, set up within the Ombudsman's Office in October 1996 as a body for the protection of women's rights, provides expert opinions.

4. The Office concentrates on matters relating to violence against women. It consequently makes a significant contribution to the analysis and collation of information on the specific cases reported, and helps to strengthen the legal instruments for improving women's quality of life and their access to public and private services.

5. The Ministry for the Advancement of Women and Human Development (PROMUDEH), established on 29 October 1996, sets out to strengthen the role of women and the family in society by means of policies that will make it possible to carry out programmes and projects aimed at social development and the eradication of extreme poverty, and incorporating the gender perspective, in order to promote greater participation by women in the political, social, legal, economic and cultural spheres.

6. Through PROMUDEH, the Peruvian State has incorporated the gender perspective, family violence and comprehensive health care as components of its strategic plan. This integrated approach, covering the entire sector, will make it possible to develop policies and programmes directed at genuinely equitable, non-discriminatory treatment for women and men, within a development process designed to improve the quality of life of both. A number of laws and programmes have recently been adopted with the aim of solving the problem of violence against women; these are described in more detail in the answer to question 13 in this report.

7. Peru's legal system has made abortion punishable, albeit with some reductions in penalties. Therapeutic abortion is the only case that is not punishable (Penal Code, art. 119). This type of abortion is not punishable if carried out by a doctor with the consent of the pregnant woman. Consent must be explicit, the woman being of sound mind, or it may be given by her legal representative if any. Abortion must be the only way of saving the pregnant woman's life or avoiding serious and permanent damage to her health.

Paragraph 23. The Committee recommends that the Government should adopt the legislation necessary to allow political parties to operate effectively and democratically, and fully to implement the rights protected by articles 22 and 25 of the Covenant.

Comments

1. Article 35 of the 1993 Constitution stipulates that citizens may exercise their rights individually or through political organizations such as parties, movements or alliances, in accordance with the law. The same article goes on to provide that the registration of parties, movements or alliances gives them legal capacity. The aim pursued is to ensure that political parties function in a democratic manner, which is not always the case, as many of them are

headed by permanent caucuses that do not allow new leaders to emerge. Another aim is to ensure the proper monitoring of political parties' sources of financing so as to prevent the kind of corruption that has occurred or is currently being exposed in other countries.

2. Between September 1995 and October 1997, 13 versions of the Political Parties Bill were submitted to Congress. Five of these are with the Congressional Commission on the Constitution. Two proposals concerning requirements for the registration of political parties and the functions of the National Office of Electoral Proceedings have been adopted and are contained in the Elections (Organization) Act (No. 26,859).

Paragraph 24. The Committee recommends that education programmes should be established for children and for the community in order to develop a thorough understanding of the principles of respect for human rights and tolerance, and of the role these principles play in the development of a sound and stable democracy.

Comments

1. The National Council for Human Rights within the Ministry of Justice is the executive's advisory body responsible for promoting, coordinating and supervising the protection of the fundamental rights of the individual. Its aims include helping to create proper awareness of respect for, and strengthening of the rule of law as a guarantee for the full and effective realization and unrestricted observance of human rights.

2. The Council promotes human rights and disseminates information through conferences and workshops for those who, in the course of their normal work, influence behaviour and education in the community. Once trained, they can actively seek ways of promoting and implementing human rights. The Council also publishes teachers' guides, manuals and leaflets as aids to participants in training courses, to help them in their task of promoting human rights.

3. In addition, in response to the need for residents of the remotest parts of the country to be aware of their fundamental rights, the Council organizes conferences and symposiums known as "human rights workshops" in those areas, with the participation of officials of grass-roots organizations and other community leaders. These should enable them to conduct information programmes on the rights recognized in Peru's Constitution and on the provisions of the main international human rights instruments. In this way they actively work to promote a proper awareness of respect for and strengthening of the rule of law, as a guarantee for the full and effective realization of human rights, as human rights promoters and leaders within the community.

Paragraph 25. The Committee hopes that, in its next periodic report, Peru will include information on the progress made to extend to women in Peru full enjoyment of the rights enshrined in the Covenant, particularly in the spheres with which the Committee is concerned (see paras. 13, 14, 15 and 16), together with detailed information on how it is complying with the provisions of article 10 of the Covenant.

Comments

1. Confirming the comments made in paragraphs 13-16 of the present report, it should further be pointed out that in Peru there are various institutional mechanisms for the protection of the rights of women. These mechanisms also promote the social and economic development of women and girls, working in conjunction with the State with the aim of contributing to formulation of public policies aimed at the full and sustainable development of women and girls.

2. The establishment of the Commission on Women, Human Development and Sport was approved by the plenary Congress of the Republic in 1995. The Commission commenced its activities in 1996 and constitutes an important forum for debate, conceptual development and the sensitization of members of parliament. The Commission is currently the largest and one of the most active in Congress. It is composed of 18 members, including men and women of all political persuasions and all sectors. Its function is to propose and publicize the necessary legislation to protect and recognize the rights of women, and it identifies, and proposes the repeal of, existing legislation which is detrimental to women. In addition, it denounces cases of discrimination and violence against women and issues advisory opinions.

3. Within the Office of the People's Advocate, in October 1996 the Specialized Office for the Defence of Women's Rights was established as a protective body. This Office's work focuses mainly on matters relating to violence against women, and so it contributes significantly to the analysis and compilation of information on specific cases reported. It also helps to promote the legal instruments that will improve the quality of life of women and access to the public and private services provided within society.

4. The Ministry for the Advancement of Women and Human Development is the highest body and was established by Legislative Decree No. 866 of 29 October 1996. Its establishment represents a response to the priority attached to the sector of the population who are among the most vulnerable in the country, namely women. The Ministry's aim is to strengthen the role of women and the family in society, through policies that will permit the execution of programmes and projects aimed at social development and efforts to eradicate extreme poverty. The gender perspective will be broadly incorporated with the aim of promoting the greater participation of women in the political, social, legal, economic and cultural spheres, the overall objective being the achievement of a full life in society with equity for men and women.

5. The establishment of this Ministry is consistent with the implementation of the Beijing Platform for Action, a commitment undertaken by Peru at the Fourth World Conference on Women held in Beijing in 1995. It was agreed at this Conference to promote the establishment of high-level bodies within States in order to provide leadership in the formulation and development of policies to encourage equality of opportunity among men and women.

6. The Peruvian State has incorporated the gender perspective, family violence and comprehensive health care as components of its strategic plan. This integrated approach, covering the entire sector, will make it possible to develop policies and programmes directed at genuinely equitable, non-discriminatory treatment for women and men, within a development process designed to improve the quality of life of both.

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